

House Approves Comprehensive Patent Overhaul

Bill Aims to Reduce Infringement Cases

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The House yesterday passed the most comprehensive patent reform in half a century, delivering a victory for computer technology and financial services companies and leaving drug companies, small inventors, and the U.S. Patent and Trademark Office bracing for a bigger fight before the bill hits the Senate floor.

The bill, which passed 225 to 175 with strong bipartisan support, is meant to reduce the mounting number of patent infringement cases by changing the ways patents are awarded and challenged.

Because much of the bill is perceived to be favorable to targets of patent-infringement suits rather than patent holders, it has attracted passionate support from big technology companies, which are usually the defendants in such suits, and criticism from drug manufacturers and small inventors, who are typically plaintiffs.

"This patent reform will help speed up patent decisions, clear up disputes and clarify the jurisprudence behind these lawsuits," said Jonathan Yarowsky, policy counsel for the Coalition for Patent Fairness, which represents technology companies such as Microsoft and Google as well as financial services companies, including Capital One. "This will streamline innovation." Some of the bill's opponents said they see room for compromise as the bill moves forward in the Senate. Labor unions and universities had agreed not to oppose yesterday's vote in exchange for further consideration of their concerns before the Senate vote. Senate Majority Leader Harry M. Reid (D-Nev.) expects the bill to reach the Senate floor in the next couple of weeks, according to his spokesman, Jim Manley.

Representatives from drug manufacturers and the Professional Inventors Alliance, an association of small inventors, have also met with Rep. Howard L. Berman (D-Calif.), a co-sponsor of the House bill who has agreed to address their concerns when the bill is reconciled with the Senate version. The Bush administration will also oppose the bill until some changes are made, Jon Dudas, under secretary of Commerce for intellectual property, said in an interview. One sticking point is the new set of guidelines for calculating patent infringement damages. Currently, damages can be awarded based on the entire value of a product that includes a component that infringes on a patent. Under this legislation, judges can instruct juries in certain cases to award damages only for the value of the component. If a computer contains a chip that is

patented, for example, the chip patent's owner would be awarded damages based on the value of the chip rather than the computer.

The standards for determining whether a patent has been willfully infringed upon -- which can lead to treble damages -- are also stricter.

Proponents of these provisions, such as high-tech companies that frequently produce devices that rely on hundreds of smaller patented components, argue that they will result in fairer and more uniform damage awards. Those against the damages changes say that they encourage infringement.

"Contrary to the way this bill has been sold, it is . . . designed to make it easier and less costly for companies and individuals to infringe patents," said Jim Greenwood, Biotechnology Industry Organization president and chief executive.

Among other provisions, the bill would expand the process for challenging patents after they've been granted and award patents based on who files for them first rather than who invented a product.

Labor groups say that Congress should address workplace issues before revamping the patent system. Currently, patent examiners spend about 20 hours reviewing an application, according to the patent office. Applicants don't generally receive a patent or denial until about 31 months after filing because of a backlog of 750,000 applications.